

December 15, 2004

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0400004**

DANNY CLIFTON AND TERESA SCOTT
Code Enforcement Appeal

Location: 38413 Southeast 47th Street, Snoqualmie

Appellants: Danny Clifton and Teresa Scott, *represented by*
Alan S. Donaldson, Attorney at Law
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King County: Department of Development and Environmental Services,
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Granted in part and denied in part

EXAMINER PROCEEDINGS:

Hearing Opened:	November 17, 2004
Hearing Closed:	November 17, 2004

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On August 20, 2004 the King County Department of Development and Environmental Services issued a notice and order to Danny Clifton and Teresa Scott that alleges code violations at property located at 38413 Southeast 47th Street and seeks to revoke building permit no. B04M0279. The notice and order cites the property for the illegal conversion of a single-family residence into a duplex; repair and remodeling of a second fire-damaged structure into a duplex in violation of zoning code requirements and of a stop work order posted March 9, 2004; and for parking of vehicles on non-improved surfaces. The Appellants are not contesting the parking violation, but have challenged the remainder of the notice and order citations. The appeal statement also raises damage issues and asserts violations of due process and equitable claims, all of which are beyond the scope of this administrative appeal. The parcel is zoned RA2.5 and is slightly less than 1 acre in size. It is undisputed that since August 1958 duplex residential uses have been prohibited on this site under applicable county zoning codes.
2. According to Assessor's records, the main house on the property was constructed in 1922. Former property resident Glen Parker testified that it was moved onto the site in 1955. Mr. Parker also stated that in 1962 or 1963 his mother converted the main house into a duplex without building permits. This structure appears never to have been described as a duplex within the Assessor's records.
3. Both the Assessor's records and Mr. Parker agree that the rear building was constructed in 1957. Mr. Parker testified that it originally served as a chemical laboratory. He further stated that it was converted to a duplex layout in 1967 but not occupied as a duplex rental unit until 1972. The Assessor's records also note a duplex use of the rear structure in 1972.
4. The rear structure was seriously damaged by fire on December 6, 2002 and appears to have been empty since that time. In the early part of December 2003 the Appellants began to focus on this property as a potential purchase and at that time made inquiries as to the legality of the duplex uses. According to their testimony, Code Enforcement Officer Sheryl Lux informed them in late 2003 that the duplex uses were "grandfathered".
5. Responding to a Health Department complaint, Code Enforcement Officer Brenda Wood on January 12, 2004 posted the 38413 Southeast 47th Street premises with "do not occupy" notices. The rear fire-damaged building was cited as standing open to entry, and the front main structure for a pellet stove that was not installed to code requirements.
6. On February 19, 2004 Danny Clifton obtained permit no. B04M0279. The application affidavit specified fire damage repair to the rear building as the basis for the permit. A February 17, 2004 inspection and damage assessment performed by a DDES inspector documented the need to replace posts, beams and rafters for a damaged carport, as well as wall and window repairs. Mr. Clifton's application affidavit identifies the rear structure as being a duplex.

7. On March 9, 2004 Officer Brenda Wood posted the rear structure at the Appellants' property with a stop work order on the basis that it entailed construction without a valid permit and constitutes an unsafe building or structure. The notations on the stop work order suggest that it also may have been intended to rescind permit no. B04M0279. The stop work order was followed by a March 18, 2004 letter from Chris Ricketts, the DDES building official, which stated that DDES was suspending the fire-damaged permit approval until a code enforcement action was resolved. The code enforcement case was identified as a January 2004 citation for the use of the building as a non-permitted duplex. In fact, however, the only January DDES letter in the record is a January 5, 2004 letter to the Appellants' seller citing the property for accumulation of junk and debris and maintenance of a substandard dwelling. After a further flurry of correspondence the suspended building permit was partially reinstated on May 11, 2004 to allow the Appellants "to complete the repair/construction in order to protect the remaining structure". This was explained as authorizing the work needed to provide "adequate protection of the structure from weather, unauthorized access and structural stability" but precluding interior finish work or any occupancy.
8. Looking at the staff photographs of the property taken first on January 12, 2004, then on March 9, 2004 when the stop work order was posted, and finally in June 2004 it appears that most of the significant repair work depicted occurred between January and March. The January photographs show a burned out and collapsed carport with significant damage extending past the carport into an adjacent room. The March photographs show that the collapsed carport roof had been removed, the damaged portion of the adjacent room had been replaced by a cinder block wall, but that the roof repair had not been completed. In the March photographs the top layer of metal roofing has been partially removed but the under-roofing has not been completely replaced. The June photographs show that in the period since March the carport was replaced and the damaged roof structure had been partially replaced to the extent of constructing new rafters and placing new plywood sheeting on the rafters. As of June the final layer of metal roofing had not been put into place. Finally, the notice and order was issued on August 20, 2004 subject to a compliance deadline of September 20, 2004.

CONCLUSIONS:

1. Neither the main house nor the rear building at 38413 Southeast 47th Street qualifies as a legal non-conforming duplex use. There is no evidence that either of these structures were either converted to duplex use before the early 1960's or under authority of a validly issued building permit. Since duplexes have not been legal uses on the property since before August 1958, these later conversions were not legal when they occurred and, by necessary implication, are not legal now. In addition, the active duplex use of the rear structure was abandoned in early December 2002 when the fire occurred, and Mr. Clifton's building permit to perform the fire damage repair was not issued until February 2004, more than a year and two months later. Thus, even if the duplex use of the rear building had been legal when established, it was terminated pursuant to KCC 21A.32.045 after it had been discontinued for more than 12 months.
2. The citation within the notice and order for repairing and remodeling the rear fire-damaged structure in violation of the March 9, 2004 stop work order is not supported by the record. The essential legal issue is confused because the county code contains two revocation sections. KCC 16.02.300 authorizes the building official to suspend, revoke or modify a building permit approval issued in error. On the other hand, KCC 23.24.100 provides for the same actions to be

taken pursuant to a notice and order. The provisions of KCC 23.24.100 should be regarded as controlling because they are stated in mandatory rather than permissive terms and provide for a more detailed procedure.

Moreover, any suggestion that the March 9, 2004 stop work order was violated is necessarily compromised by the May 11, 2004 letters from Chris Ricketts and Joe Miles which reinstate the building permit subject to limitations. It is not clear that the carport restoration and roof reconstruction work that occurred subsequent to the stop work order violates the terms of the May 11, 2004 letter from Chris Ricketts. Roofing is necessary to protect the structure from the weather, and posts, beams and trusses provide the building with structural stability. For the repair and remodeling by the Appellants to be in violation of the stop work order as modified by the May 11, 2004 letters, one would need to conclude that the work was not necessary to protect the structure from weather, unauthorized access or structural instability, but rather was uniquely related to restoring the illegal duplex use. The photographic evidence does not support this conclusion. Finally, since a Title 23 revocation is only effective under the ordinance at the time of the notice and order compliance date, there is an argument that work done before the issuance of the notice and order cannot be deemed unlawful.

3. Because the building permit issued to Danny Clifton was to repair a fire-damaged duplex, its validity as issued depends upon the duplex use having been legally established and not extinguished by the passage of time. Neither of these conditions apply to permit no. B04M0279. The rear building on the property was not legally established as a duplex in the 1960's, and the duplex use was abandoned for more than 12 months before the permit was requested. Therefore to the extent that the building permit authorizes restoration of a duplex use, it was issued in error. It would be our view, however, that the permit should be modified rather than revoked, and those repairs necessary to the integrity to the structure for its permitted use as a residential outbuilding should be allowed to be completed.
4. In summary, the supplemental notice and order will be sustained as to its citations for the illegal conversion of the two buildings into duplex units and for the parking of vehicles on non-impervious surfaces. The appeal will be granted as to the notice and order citation of the property for repair and remodeling work in violation of a stop work order. Finally permit no. B04M0279 will not be revoked but rather will be revised to allow only necessary structural repairs to the damaged rear structure and shall prohibit repairs or remodeling that are inconsistent with the building's permitted use as a residential accessory structure.

DECISION:

The appeal is GRANTED with respect to the citation of repair and remodeling work in violation of a stop work order and DENIED with respect to the assertion that the two duplex structures should be regarded as legal non-conforming uses. Building permit no. B04M0279 is revised as specified below.

ORDER:

1. Building permit B04M0279 is revised to authorize repairs consistent with the rear structure's permitted use as a residential accessory building. Within 30 days of the date of this order the Appellants shall submit to DDES a plan for building remodeling and repair that restores its

structural integrity but removes all fixtures specifically supportive of a non-permitted duplex habitation.

2. Within 60 days of the date of this order the main residence shall be reconverted to a single-family (non-duplex) configuration.
3. Within 30 days of the date of this order all vehicle parking on non-impervious surfaces shall be eliminated. An improved parking surface suitable to the single-family residential use of the main house shall be provided.
4. No penalties shall be assessed against the Appellants or their property if all the deadlines stated within conditions 1 through 3 above are met. If any of these deadlines are not met, DDES may impose penalties retroactive to the date of this order.

ORDERED this 15th day of December, 2004.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 15th day of December, 2004, via certified mail to the following:

Alan S. Donaldson, Attorney
110 – 110th Avenue Northeast, Ste. 370
Bellevue, Washington 98004

TRANSMITTED this 15th day of December, 2004, to the following parties and interested persons of record:

Danny Clifton & Teresa Scott
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NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE NOVEMBER 17, 2004, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0400004.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Jeri Breazeal, representing the Department; Alan Donaldson, representing the Appellant; Appellants Danny Clifton and Teresa Scott; Sheryl Lux, Brenda Wood and Glen Parker.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES staff report for 11/17/04
- Exhibit No. 2 Copy of Notice and Order (3 pgs.) issued 8/20/04 with cover letter
- Exhibit No. 3 Copy of Appeal received 9/08/04 (6 pgs.), appeal received 7/27/04 (5 pgs) with attachments A through J
- Exhibit No. 4 Copies of codes cited in the Notice and Order (10 pgs.)
- Exhibit No. 5 Copies of correspondence labeled a through i (9 pgs.)
- Exhibit No. 6 Copies of Assessor's records (21 pgs.)
- Exhibit No. 7 Copy of Fire Marshal's fire investigation report (1 pg.) dated 12/06/02
- Exhibit No. 8 Copy of email from Greg Borba dated 4/13/04
- Exhibit No. 9 Copy of letter (4 pgs) from Public Health to Tom McCuen dated 4/08/04
- Exhibit No. 10 Copy of complaint email from Cindy Marshall dated 1/02/04
- Exhibit No. 11 Copy of permit application form dated 2/19/03
- Exhibit No. 12 Color copies of photographs labeled a through j (10 pgs)
- Exhibit No. 13 Copies of postings: 1/12/04 Do Not Occupy Notices (2) and 3/09/04 Stop Work (2 pgs.)
- Exhibit No. 14 Copy of repair permit, Inspection Log, charge and payment summaries (2), Affidavit of Application form and Damage Assessment Report
- Exhibit No. 15 Letter to Joe Miles dated 4/23/04 with attachments (2)
- Exhibit No. 16 Assessor's printouts (2) dated 11/17/04